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MEDIATION

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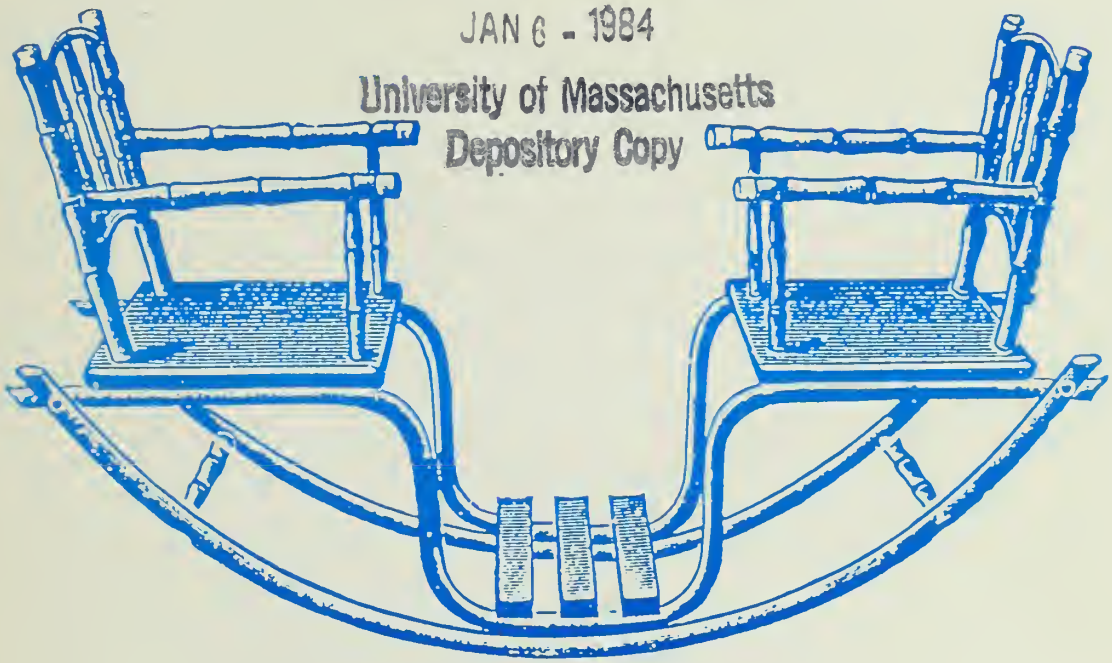

An Alternative That Works

Albie Davis
Law-Related Education Program
District Court Department ■ Trial Court of Massachusetts

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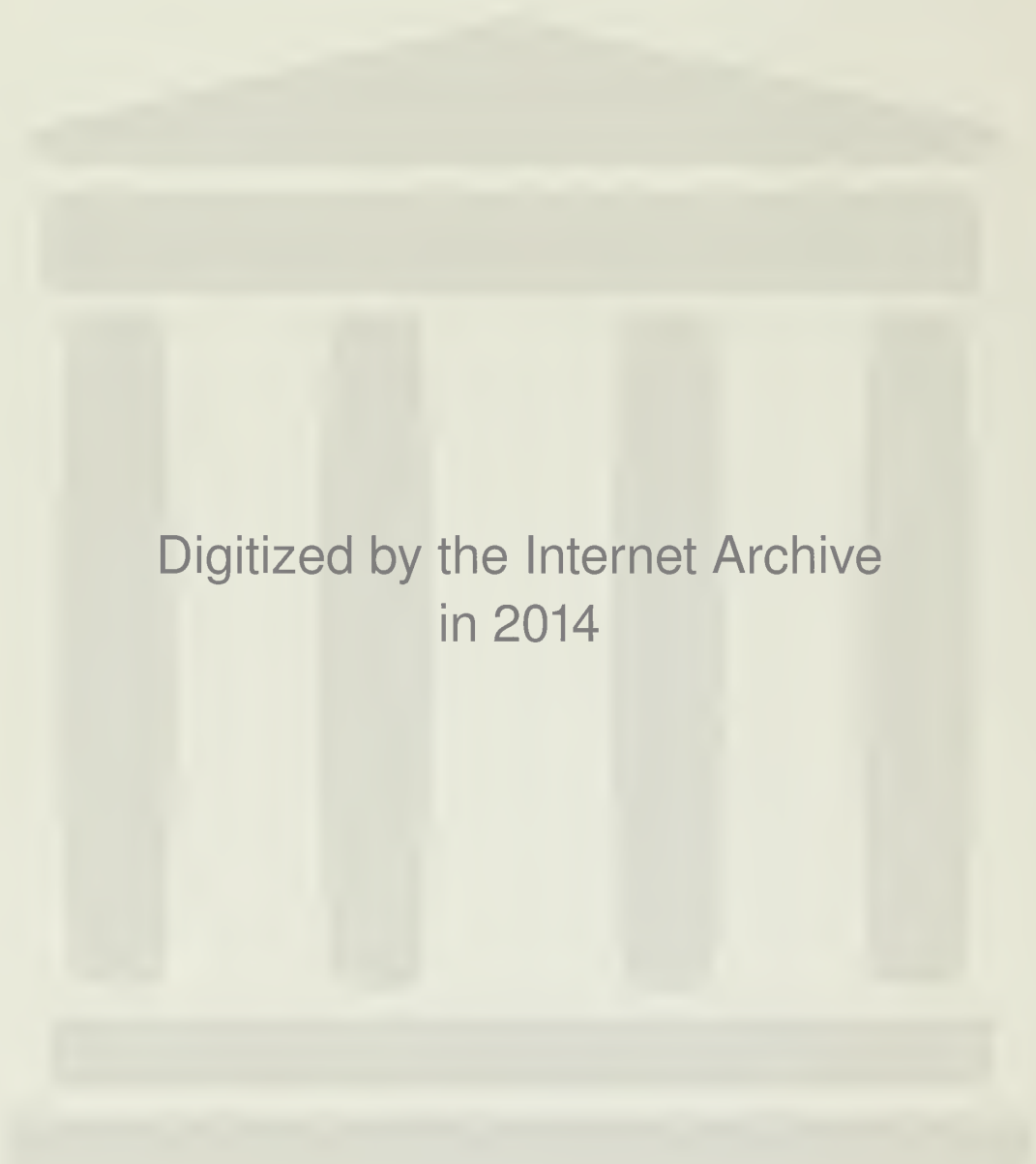
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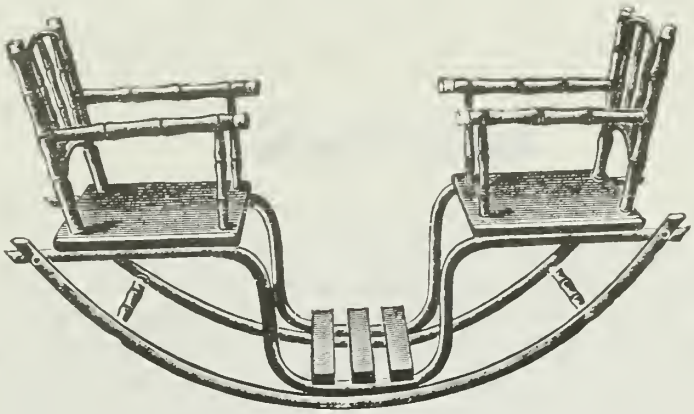

. . . An Alternative That Works

A BRIEF OVERVIEW OF MEDIATION, INCLUDING:

What is mediation?

How are mediators trained?

What skills are required?

What issues are raised?

Resources and bibliography

Prepared by

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Special Thanks

Special Thanks to Della Rice of the Dorchester District Court Mediation Unit, Janet Rifkin of the UMass Mediation Project, Neil Houston of the Crime and Justice Foundation and the members and staff of the Special Committee to Study Alternative Means of Dispute Resolution for their advice and assistance in preparing this publication on mediation.

June 1983

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INTRODUCTION

In 1977, Chief Justice Samuel E. Zoll of the District Court Department of the Trial Court of the Commonwealth established a Special Committee to Study Alternative Means of Dispute Resolution. That Committee examined mediation programs in Massachusetts and throughout the United States. In its final report, published in August, 1978, the Committee came to the following conclusions:

"Winner-take-all" Approach Not Suited to All Disputes

The "winner-takes-all" approach of adjudication is not well suited to resolve certain types of disputes which are brought to the District Court Divisions. (Massachusetts has sixty-nine District Courts which constitute the sixty-nine Divisions of the District Court Department.) Disputes arising between individuals in a long-term relationship, such as family members, neighborhood residents, buyer and seller, and landlord and tenant, as well as disputes occuring within an established public institution, such as a school, welfare department or housing development, generally are not amenable to an all-or-nothing solution typical of our adjudicative process.

Mediation Can Help People Resolve Underlying Problems

A narrow focus on the immediate matter in issue in these types of controversies will not avoid or minimize future disputes nor will it effectively resolve the underlying problems. Mediation of these types of disputes will enable the disputants to better understand their day-to-day living situations and will elicit the adjustments necessary to make their lives more stable. Changes in behavior may result from the mediation process. Potentially more serious altercations may be averted.

Mediation A Useful Alternative for District Courts

The Committee believes that mediation is an alternative which could be useful in the District Court Department. As a result, the Committee recommends the establishment of experimental mediation programs within District Court Divisions. Mediation of small claims matters by Clerk-Magistrates pursuant to the court reorganization legislation will soon become a reality, and preparations to that end should be undertaken.* Many minor citizen disputes would appear to be resolvable very effectively through the mediation process. In any event, further examination of this subject matter is warranted.

*Legislation allowing Clerk-Magistrates to mediate small claims cases is now the law in Massachusetts.

Court-Sponsored Mediation Programs May Benefit Schools

In 1979, the District Court Department established a statewide program to encourage its sixty-nine divisions to become educational resources to the communities they served. Courts and the Classroom, the Department's law-related education program, has given assistance to local courts and school systems wishing to arrange court visits, seminars, Law Day Celebrations, speakers bureaus, law courses and mock trials. It also helped develop two programs to train high school students and teachers in the art of mediation.

Mediation as a form of dispute resolution has shown great promise in Massachusetts, both in our courts and our schools. We hope that this publication will further that promise.

High school students practice mediation skills.

WHAT IS MEDIATION?

Some Definitions

Mediation is defined several ways. Here are some definitions ranging from simple to complex.

- Friendly or diplomatic intervention, usually by consent or invitation, for settling differences between persons, nations, etc.

  - Webster's New World Dictionary

- The act of a third person in intermediating between two contending parties with a view to persuading them to adjust or settle their dispute.

  - Black's Law Dictionary

- Mediation is a method of resolving disputes and conflicts. It is a voluntary process involving a complainant, the person who brings the complaint, and a respondent, who has done something the complainant is upset about. Mediation requires the participation of a mediator who operates from an impartial base and whose primary role is to promote agreement. The mediator has no authority to impose a settlement on the parties, nor can the parties be forced to enter mediation or to reach an agreement. Compromise is at the heart of a successfully mediated dispute and the end result of a mediation session is that there are neither winners nor losers but rather, it is hoped, generally satisfied individuals.

  - The Mediation Project
    University of Massachusetts/Amherst

- The purpose of mediation is not to judge guilt or innocence, but to help parties . . . get at the root of their problems and devise their <u>own</u> solutions to them. A mediator can help the parties talk it out unrestrained by questions of admissibility. This should help the parties concentrate on what should be done in the future rather than punishment and revenge, or "who is responsible" for "what past event."

  - Dorchester District Court Mediation Unit

On the next page, mediation is compared to other forms of dispute resolution.

How Does Mediation Differ From Other Forms Of Dispute Resolution?

Our thanks to the Crime and Justice Foundation of Boston for compiling this helpful set of definitions.

ADJUDICATION — Adjudication involves a third party--judge or jury-- to hear the facts of a dispute and determine guilt or innocence or civil liability. Evidence is presented according to a detailed set of procedures, and the third party has coercive powers conferred by the state. A decree or sentence is imposed by the third party, depending upon his or her decision based upon the evidence.

ARBITRATION — Arbitration involves an independent third party to resolve a dispute. The third party hears both sides of the problem, then decides what the solution ought to be. The process is called "binding" arbitration if the third party can apply sanctions for failure to accept or abide by the decision. It is called "non-binding" or "advisory" when the arbitrator does not have any special enforcement powers. (Non-binding arbitration is sometimes used in mediation programs, when the disputants ask the mediator to come up with a solution.)

CONCILIATION — Conciliation involves a third party to bring disputants together so that they can negotiate with each other. This may take several forms: the third party may persuade the disputants to meet in the same room for face-to-face negotiations, or he or she may "shuttle" information between the disputants.

OMBUDSPERSON — An ombudsperson approach involves a third party--a fact finder--to investigate grievances. He or she uncovers information in order to make a judgment about the merits of the dispute. Except for the purpose of investigation, there is generally little contact between the ombudsperson and the disputing parties. An ombudsperson can arrive at an independent decision, which is often an advisory one.

MEDIATION — Mediation involves an independent third party who acts as a facilitator in the resolution of a dispute. The third party hears both sides of the problem and helps the disputants reach a satisfactory decision about the issue at hand. The mediator provides a forum within which disputants can construct their own mutual agreement.

Mediation is different from the other dispute resolution techniques defined above. Mediators work directly and in depth with the disputants. They encourage discussion but are not concerned with elaborate rules of evidence. Mediators try to help disputants reach their own agreement, but do not decide what the solution ought to be. Finally, mediators help disputants achieve lasting resolutions. However, they cannot enforce agreements once they have been reached.

What Are The Benefits Of Mediation?

> The obligation of our profession is to serve as healers of human conflicts.
>
> - Warren E. Burger
> Chief Justice of the United States

Many reasons are cited to support the growth of mediation as a voluntary option for citizens seeking resolution of their disputes.

1. Affordable: For many people the cost of obtaining justice through the adversary system is high. In most cases, mediation services are free.

2. Timely: Often court calendars are backlogged for long periods. Mediation cases are heard shortly after the disputes arise.

3. Convenient: Most mediation projects offer their services in the evenings and on weekends so that disputants do not lose work time.

4. Comfortable: Mediation sessions are often held in community settings that are familiar and comfortable to the disputants.

5. Understandable: Case coordinators and mediators are trained to set disputants at ease, to explain the mediation project, their own training and the process that will be followed. Since the process is clear and simple, disputants can focus upon the issues bothering them and the eventual resolution of their dispute. Often mediators are bilingual, which allows disputants to express themselves in the language they understand best.

6. Private: With few exceptions, mediation sessions are held in private so that disputants need not air their grievances in a public setting.

7. Confidential: Mediators take an oath of confidentiality, which means that no part of the discussion will be reported outside the room. Any notes taken to assist the process will be destroyed in front of the parties. The only written record of the session, if a settlement is reached, will be the agreement signed by all parties.

8. Healing: Free from the usual rules of evidence that hold in the courtroom and with the gentle, but skilled, guidance of the mediators, disputants can get at the root causes of a dispute. Once they have had an opportunity to state their own case fully, they are better able to hear the other party's point of view. Such an airing of grievances and search for a solution can mend relationships among families, friends, neighbors, landlord/tenants, teachers/students and others who make up our communities.

9. Effective: Evaluations show that over 85% of mediations conducted in national dispute resolution centers result in agreements.

When Is Mediation Appropriate?

Dispute Resolution Centers across the United States offer mediation services to people involved in a wide range of disputes. Some are referred to the centers directly from the community; others are referred by the police, district attorney or courts. In Massachusetts, mediation techniques are used in civil, criminal, small claims and juvenile cases.

As a general rule, most people in the field feel that mediation is most appropriate in cases where there is a relationship between the parties. Such cases might include:

1. Family Members: This could include disputes between husband and wife, children and parents, couples, or roommates. For example, violence may have errupted between a husband and wife who are separating. They may need to agree upon terms for mutual respect, property rights and visitation rights.

2. Neighbors: Quite commonly, disputes break out between neighbors living in close proximity or even in the same building. Some disputes involving an entire block have come to the mediation centers. A typical dispute might center upon respecting one another's property, controlling one's pets and treating one another with respect.

3. Friends: Disputes among friends can flare up into violent incidents. They can focus upon borrowed but unreturned goods, broken promises or a host of other complaints.

4. Teacher/Student: The school setting is ripe with disputes which, if not settled, can lead to suspensions and patterns of non-attendance and increased violence. Often the complaints center upon verbal or physical violence.

5. Landlord/Tenant: Disagreements about the upkeep of apartments, unwanted entries, noise levels and the timing and amount of rent receipts are common. These disputes can become violent.

6. Consumer/Merchant: Goods that don't work, services not rendered properly, payments not made, repairs more costly than anticipated--these are a few of the disputes that arise among consumers and merchants.

Experience has shown that the incidents which prompt the disputants to request the use of mediation services often are not the underlying cause of the dispute. The causes, especially in long-term relationships, go much deeper and involve feelings and histories that would be considered irrelevant in a formal court proceeding. The mediation process, which gives all parties an opportunity to express all their feelings, is an excellent one for developing long-term solutions. Because the parties are so highly involved in shaping the final agreement, they are more inclined to respect it and to want it to work.

How Does Mediation Work Through The Courts ?

Mediation begins with a dispute and, when successfully completed, ends with an agreement. A typical mediation process might flow as follows:

Dispute	Two or more people have a dispute. One, or both, complains to the police, the court or a community agency.
Police Court Community	The police, court or community agency may refer the dispute to the mediation project. In the court, the cases usually come first to the Clerk-Magistrate, who, when appropriate, refers the case to mediation at the show-cause hearing. Judges also refer cases to mediation.
Referred to Mediation	The Case Coordinator of the mediation project conducts an intake interview, explains that the mediation process is voluntary, and, if both parties agree to mediate, schedules the mediation session and assigns mediators to the case.
Mediation Session Held	Community members, lawyers, law students and others trained in mediation conduct a mediation session. Mediators often operate in pairs. When possible, they are selected to "mirror" the disputants in terms of race, sex and other background. (See the following page for the stages in a mediation session.) When successful, the mediation leads to a written agreement.
Written Agreement	The written agreement is signed by all parties. Each party receives a copy. In cases referred by the Clerk-Magistrate, the Clerk-Magistrate receives a copy. If the agreement holds for 30 days, the case is not forwarded through the judicial system. In cases referred by a Judge, the Judge receives a copy. The case is continued without a finding for 90 days. If the agreement holds, the case is dismissed.
Followup by Coordinator	The Case Coordinator reviews the settlement and contacts appropriate social service agencies, if called for by the agreement. The Coordinator usually calls the parties after two weeks and at the end of the 30 or 90 day period to make sure that the agreement is holding to the satisfaction of both parties. (If problems arise, the services of the mediators may be used again.)

What Is A Mediation Session Like?

(Adapted from the Crime and Justice Foundation mediation materials.)

Stage 1: The Preliminary Conference: The mediators arrive at the Mediation Center 15 minutes prior to the session to receive background information about the case, such as the number of disputants, their names, their relationship, the type of complaint(s) and the referral source. Little other information is given in order to avoid prejudice.

Stage 2: The Introduction and Program Explanation: Mediators stand, greet the disputants, introduce themselves and generally set the disputants at ease. Taking turns, as agreed upon in advance, the mediators a) describe the program and the fact that it is a voluntary option, b) describe their own role as a neutral third party, c) explain that the session is confidential, d) describe the process that the session will follow, e) explain that a written agreement will be sought, f) assure all parties that they will have as much time as they need to work out a resolution, and g) give all parties an opportunity to ask questions.

Stage 3: The Opening Session: With all parties present, each person is given an opportunity to vent his or her feelings and thoughts. Mediators should start to acquire a clear sense of what each disputant thinks are the key issues. It is at this stage that the mediators begin to diffuse the air of hostility and contentiousness between the parties, while introducing a tenor of conciliation and understanding. They also seek to have both parties articulate an initial sense of what they would like to see come out of a mediated agreement.

Stage 4: The Recess: Recesses are usually necessary between the opening session and each subsequent private session. A recess provides mediators with a brief interlude to review information gathered, sort out issues, consider competing interests, check perceptions and develop a strategy for the next stage of the proceedings. Questions such as "Who will be called into the next session?" "What will be the objectives of the next session?" and "How will the issues be broached and by whom?" are asked and settled.

Stage 5: Private Sessions: At these sessions, mediators draw out from the disputants the issues and feelings that were not articulated in the opening session at which all parties were present. Through careful listening and artful probing, the mediators identify and put in priority order the disputants' key issues and terms for settlement. The goal at this point is to reconcile each party's "shopping list."

Stage 6: Settlement Techniques: Using the information gained at the opening and private sessions, mediators begin to steer the disputants toward a settlement. They gently help disputants eliminate extreme positions and they act as agents of reality, reminding the disputants of the benefits of ending the dispute. The evolving terms of the agreement are checked with each party until a final settlement is agreed upon.

Stage 7: The Written Agreement: In clear, non-inflamatory words, the mediators draft an agreement based upon the terms of the disputants. The agreement is then signed by all parties, including the mediators. The notes from the mediation session are destroyed in front of the disputants.

How Are Mediators Trained?

1. Selection of Mediators

People of all ages and all backgrounds have been trained to be successful mediators. Most mediation trainers will tell you that a mediator must be patient and conscientious, must use common sense, must be empathetic, and must be able to learn from his or her successes and mistakes. If a person possesses these qualities, he or she will be able to gain the required skills during the mediation training.

2. How Long is the Training?

Most Massachusetts mediators have been trained by experienced mediators from the Dorchester District Court Mediation Unit or mediators who were originally trained by the Institute for Mediation and Conflict Resolution, Inc. of New York. The training program used by the Dorchester Unit involves eleven three-hour sessions plus the mediation of two actual cases. Training is usually completed in a month's time.

3. What Format does Mediation Training Follow?

Mediation is a process. It requires a mediator to be experienced in a number of techniques. These techniques cannot be learned simply by listening to someone explain them. The key to mastering the art of mediation is doing it. Trainees practice mediation over and over again and their performances are critiqued and analyzed. If experience is the sum of our mistakes, mediation training is designed to accelerate that experiential process.

Although some background materials are supplied to mediation trainees in order to reinforce what they are learning, the primary mode of learning is the simulation. True-to-life case studies are used as material. Trainees rotate through three equally important roles:

a) Mediators In teams of two or three, trainees practice the required skills from setting the disputants at ease to writing the final agreement.

b) Disputants By playing the role of the disputants, trainees have a chance to experience how mediation "feels" first-hand. They also build empathy for disputants in general.

c) Active Observer Standing back as an active observer, taking notes which will be used in post-critique sessions, trainees can see the "whole picture" and evaluate the impact of specific strategies in specific situations.

4. What Specific Skills are Learned?

a) Putting the disputants at ease: Mediators are trained to stand when disputants enter the room, introduce themselves, shake hands and do whatever they can to reduce tension and put the disputants at ease. This is the first step toward building trust.

b) Building trust: Trust must be earned. The mediator must learn how to gain the trust of all the disputants and regain it if it is lost during the session. The parties must view the mediator as impartial, but highly interested in helping them reach a resolution.

c) Listening Actively: A mediator must assume the position of being educated by the parties. Personal biases and value systems must be set aside during the session. Verbal and physical cues that encourage openness among the disputants must be mastered.

d) Reducing defensive communication: The mediator must learn to draw out feelings, information and potential terms for settlement without threatening the disputants and thus encouraging defensive communication. Judgmental speech patterns must be avoided.

e) Managing conflict: A mediator must be comfortable with a certain degree of conflict among the parties. He or she must discover the fine line between letting a disputant express a feeling and letting that feeling get out of hand. Strategies for redirecting conflict to a positive end must be learned.

f) Building the will to settle: During the entire mediation session, the mediator must be alert for all signals from the disputants that could create momentum and a tendency to agree. The mediator builds antennae that are sensitive to every area of possible agreement, no matter how insignificant upon first view. The mediator gently, but sometimes firmly, helps disputants eliminate extreme positions and focus upon realistic, positive outcomes of mutually agreeable settlements.

g) Writing the final agreement: The mediator must learn how to translate the verbally expressed terms of the disputants into written statements which clearly state the settlement without restimulating the original conflict.

h) Working as a team: Many mediation projects believe that mediation is best conducted by a team, especially one that reflects the background of the disputants. Mediators must learn how to share responsibilities, draw upon one another's strengths, come to decisions about strategies quickly and, in general, be supportive of one another.

The Growth of Mediation in Recent Years

> The notion that ordinary people want black-robed judges, well-dressed lawyers and fine courtrooms as settings to resolve their disputes is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible.
>
> - Warren E. Burger
> Chief Justice of the United States

From the Chief Justice of the highest court in the United States comes a statement that best explains the rising interest in alternate means of dispute resolution. "People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible."

By the sixties and early seventies, most professionals in the justice system were admitting that our court system could no longer accomodate the demands put upon it. Alternate forms of dispute resolution were investigated, invented, and adapted

One of the first formal mediation centers opened in Ohio in 1971. This pilot project, The Columbus Night Prosecutor's Program, arranged for interpersonal disputes and bad check cases to be referred to its founders, a Capital Univsity Law School professor and the City Attorney of Columbus. The project was successful and was able to expand in its second year after receiving funding from the Law Enforcement Assistance Administration (LEAA).

The American Arbitration Association (AAA) and the Institute for Mediation and Conflict Resolution (IMCR) also played an active role in expanding mediation. In 1968, the AAA established the National Center for Dispute Settlement in Washington, D.C. for the negotiation of urban disputes.

The IMCR sponsors the New York Institute for Mediation and Conflict Resolution Dispute Center. The Center's successful use of community volunteers encouraged many later programs to select residents as mediators instead of paid professionals or law students.

In the mid-seventies, a variety of programs opened across the United States. The Urban Court Program, which serves as a model for other programs in Massachusetts, started in 1975. In that same year, the American Bar Association, the Judicial Conference of the United States and the Conference of the Chief Justices jointly sponsored the Pound Conference (the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice). Through a Task Force chaired by then Judge Griffin Bell, the Conference recommended the development of Neighborhood Justice Centers to "make available a variety of methods for processing disputes, including arbitration, mediation, referral to small claims courts as well as referral to courts of general jurisdiction."

During the past ten years, the alternative dispute resolution movement has produced more than 180 "minor dispute centers." Some of these centers are operating strongly; others have closed. The next ten years may well shape the future of mediation.

Important Issues Raised By Mediation

The growth of the mediation movement has led to increased interest in the process and a certain amount of questioning and controversy. These issues of concern to both proponents and opponents of mediation must be considered by serious students of alternate forms of dispute resolution. Some of the key questions are listed below:

1. Some mediation projects are connected to the courts. Others are independent of the courts. Is one model preferable to the other?

2. Should mediators be of the same community as the disputants, but strangers to them? Should mediators know the parties involved?

3. Should mediation sessions be private (as in many projects) or open to the public (as in a few projects)?

4. Should mediators be trained volunteers from all walks of the community or should mediators be academically trained specialists?

5. In situations where one party is dominant and one submissive, are mediation strategies sufficient to protect all parties?

6. In situations which involve parties from various cultural groups, are mediation strategies sufficient to prevent inequities?

7. Are there some issues that ought not to be mediated, but should be brought to court, such as civil rights cases?

8. Is the mediator's oath of confidentiality such that it will hold up in court? Could a mediator be required to testify in court? (At present there is no commonly accepted privilege for mediators as there is for lawyers, physicians and spouses.)

9. How should mediators be trained? What kind of supervision should they receive? On what basis should mediators and mediation be evaluated?

10. How should the legal profession view mediation? As a viable alternative for the public or a threat to their own livelihood?

11. How does a process such as mediation, one that is personal and does not rely on rules of evidence and strict procedures, fit into our system of justice as we traditionally think of it?

12. Is mediation a strong force that will become a permanent part of our justice system or a passing fad that will die from lack of interest and attention?

RESOURCES

Massachusetts Mediation Projects

Boston Municipal Court Mediation Program
Crime and Justice Foundation Project
19 Temple Place
Boston, MA 02111

(617) 426-9800
Cynthia Brophy
(established 1980)

Serves area within the BMC's jurisdiction. Handles family, neighbor, friends, merchant/customer, business disputes, as well as disputes among strangers with a negotiable basis. Referrals received from the bench, Clerk-Magistrates, police, District Attorney's Office and Public Defenders. Massachusetts Bar Association members volunteer as mediators.

Cambridge Dispute Settlement Center
A program of Cambridgeport Problem Center
1 West Street
Cambridge, MA 02139

(617) 876-5376
Beth Schachtman

Serves Cambridge and nearby communities. Handles family, neighbor, friends and landlord/tenant disputes referred by bench, Clerk-Magistrates, agencies and community members. Community members volunteer as mediators.

Children's Judicial Resource Council
34 Royal Avenue
Cambridge, MA 02138

(617) 876-8036
Patrick Phear

A non-profit agency serving Meddlesex County. Primarily mediates issues arising out of divorce, such as visitation, custody, child support and long-term fiscal needs. Emphasis on the impact on the child. Referrals from bench, lawyers and other sources. Sliding scale fees based upon ability to pay.

Children's Hearings Project
of the Massachusetts Advocacy Center
497 Cambridge Street
Cambridge, MA 02141

(617) 661-4700
Sandra Wixted
(established 1980)

Serves jurisdictions of the Department of Social Services and District Courts in Cambridge, Somerville, Malden, Waltham, Newton, Woburn, Dedham and Concord. Conducts parent/child mediation, primarily in child in need of service cases and some care and protection cases. Community members volunteer as mediators.

Dispute Resolution Project, The
The City of Springfield
31 Elm Street, Suite 231
Springfield, MA 01103

(413) 787-6480 or 787-6481
John J. Garvey
(established 1983)

Serves residents of North End, South End and Downtown Springfield community development areas. Referrals from courts and community groups primarily in the areas of housing and juvenile issues. Staff will act as problem solving ombudsperson and will see that community members are trained as mediators.

Dorchester District Court Mediation Unit
510 Washington Street
Dorchester, MA 02124

(617) 288-9500
Della Rice
(established 1975)

Serves Dorchester and Mattapan. Handles family, neighbor, friends, landlord/tenant, merchant/customer and other community disputes referred by bench, Clerk-Magistrates and other sources. Community members volunteer as mediators.

Family Mediation Program
Cape Cod Family and Children's Service
175 West Main Street
Hyannis, MA 02601

(617) 775-8605
(617) 255-2980
(established 1983)

Serves Cape Cod. Handles parent/child issues referred by the Department of Social Services, courts and other community agencies. Community members volunteer as mediators.

Family Mediation Program
Catholic Charities Centre
296 Court Street
Plymouth, MA 02360

(617) 746-9025
Elaine Taber Noon
(established 1983)

Serves communities within the jurisdiction of the Plymouth District Court and Department of Social Services in the Plymouth area. Handles parent/child cases. Takes referrals from Department of Social Services, courts and community agencies. Community members volunteer as mediators.

Framingham Mediation Program
Crime and Justice Foundation
600 Concord Street
Framingham, MA 01701

(617) 872-9495
Carol Bronder
(established 1979)

Serves area within Framingham District Court jurisdiction. Handles family, neighbor, friends and landlord/tenant disputes referred by bench, Clerk-Magistrates and various community agencies. Community members volunteer as mediators.

Gloucester District Court Mediation Program
Crime and Justice Foundation
197 Main Street
Gloucester, MA 01930

(617) 426-9800
John Larivee

Serves area within jurisdiction of Gloucester District Court. Handles disputes among families, friends and neighbors referred by Clerk-Magistrate, bench and local housing authority. Community members volunteer as mediators.

Harvard Small Claims Mediation Program
Harvard Negotiation Project
Harvard Law School, Pound Hall
Cambridge, MA 02138

(617) 495-1684
Ask for one of the
five directors

Serves the Small Calims divisions of the Quincy, Brookline and Cambridge District Courts. Provides an alternative method for resolving small claims cases. Staffed by volunteers from Harvard Law School. Students from Harvard Law School and Harvard College and community members volunteer as mediators.

Lynn Youth Resource Bureau Mediation Project
19 Sutton Street
Lynn, MA 01901

(617) 598-4874
Richard Bedine

Serves six communities in the Greater Lynn area. Handles parent/child, family, neighbor, friends, landlord/tenant and merchant/customer disputes referred by the court, police and community. Community members volunteer as mediators. Has received Department of Social Services grant for parent/child cases.

Massachusetts Institute of Technology
Grievance Procedure
President's Office, M.I.T.
77 Massachusetts Avenue
Cambridge, MA 02139

(617) 253-5921 or 253-5446
Clarence Williams
Mary Rowe

Serves anyone in the M.I.T. community who is not already served by an organizing unit (union). Referrals are usually made by word-of-mouth. Staff primarily act as ombudspersons and/or counsellors. Occassionally they conduct mediation sessions.

Salem Mediation Program
Salem District Court
65 Washington Street
Salem, MA 01970

(617) 745-4165
Susanne Goulet Orenstein
(established 1979)

Serves eight communities within the jurisdiction of the Salem District Court. Handles family, neighbor, friends and landlord/tenant disputes referred by the Clerk-Magistrate, bench and police. Also serves the Small Claims division. Community members volunteer as mediators.

South Boston Dispute Settlement Project
South Boston Neighborhood House, Inc.
521 East 7th Street
South Boston, MA 02127

(617) 268-1619
Martin Walsh
(established 1981)

Serves South Boston area. Handles small claims and disputes among tenants of public housing. Referrals from court, Clerk-Magistrate, police and community. Staff and community members serve as mediators.

UMass Mediation Project/Amherst
University of Massachusetts
127 Hasbrouck
Amherst, MA 01003

(413) 545-2462
Janet Rifkin
Eileen Stewart

Serves members of University and surrounding communities. Handles housing, dormitory, landlord/tenant, sexual harassment, racial conflicts and family disputes referred by residential staff, Dean of Students Office, University Police and local courts, as well as self-referrals from the community. University and community members volunteer as mediators.

UMass Mediation Project/Boston
College of Public and Community Service
Downtown Center, UMass Boston
Boston, MA 02125

(617) 956-1088
David Matz

Serves the Greater Boston area. Primarily handles landlord/tenant disputes. Students receive mediation training from the faculty. Both students and faculty serve as mediators.

Additions and Corrections, Please

If you are aware of other mediation projects in Massachusetts, or if you wish to correct your own entry, please use the form at the end of this publication to help us update this publication and our resource files.

Mediation Trainers, Consultants And Information Sources

American Arbitration Association (617) 542-1071
Boston Office Richard Reilly
294 Washington Street
Boston, MA 02108

Best known for its labor negotiation, the AAA also organizes dispute resolution in other areas. It provides the parties with a list of expert negotiators, mediators or arbitrators and then leaves the parties and the intervenor to handle the dispute privately.

Center for Community Justice (202) 296-2565
918 16th Street, N.W., Suite 503 Linda Singer
Washington, D.C. 20006

A source for training, consulting and information.

Center for Mediation in High Education (212) 246-7447
American Arbitration Association Jane McCarthy
140 W. 51st Street, 10th Floor
New York, NY 10020

A source for training, consulting, research and information.

Children's Hearings Project (617) 661-4700
of the Massachusetts Advocacy Center Sandra Wixted
497 Cambridge Street
Cambridge, MA 02141

In addition to running a mediation center, the Children's Hearings Project staff trains mediators for other projects.

Children's Judicial Resource Council (617) 876-8036
Patrick Phear

In addition to conducting family mediation sessions, this project consults with the courts on divorce and child-related issues.

Crime and Justice Foundation (617) 426-9800
19 Temple Place Neil Houston
Boston, Ma 02111

This non-profit criminal justice organization is highly involved in developing mediation programs throughout the state. It trains mediation staff and assists in the design, operation and implementation of various mediation projects.

Harvard Negotiation Project
Harvard Law School
Pound Hall 500
Cambridge, MA 02138

(617) 495-1684
Roger Fisher
Bruce M. Patton
William Ury

This project brings together scholars and professionals to improve the practice of negotiation, mediation and conflict menagement. It also conducts research, provides technical assistance and develops training programs for both students and mid-career professionals. It recently published a Dispute Resolution Directory of Boston Area Courses and Internships.

Institute for Mediation and Conflict Resoultion
116 East 27th Street
New York, NY 10016

(212) 628-1010
Laura Blackburn

A source for training, consulting and information.

Massachusetts Bar Association
Task Force on Alternate Dispute Resolution
One Ashburton Place
Boston, Ma 02108

(617) 523-4529
Robert E. Ginness
Wayne A. Budd

A Task Force of the MBA which has studied and written about mediation. Members of the MBA mediate with the Boston Municipal Cour Mediation Project.

Mediation Trainers and Consultants of Boston
45 Fendale Avenue
Dorchester, MA 02124

(617) 288-6005
Kathy Grant

A source of training and consluting.

National Center for Collaborative Planning and Community Services
P.O. Box 481
South Dennis, MA 02660

(617) 394-5858
William F. Lincoln

Handles a broad range of environmental and community related dispute resolution activities for public and private clients. Also offers training in conflict management and dispute resolution.

Special Committee on Alternative Means of Dispute Resolution
American Bar Association
1800 M Street N.W.
Washington, D.C. 20036

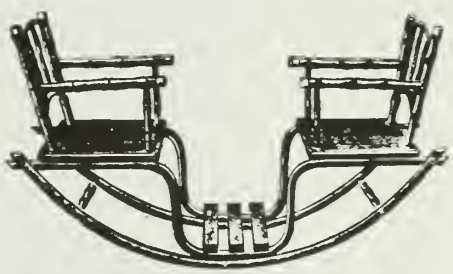
(202) 3311-2258
Larry Ray
Susan Poole

This American Bar Association committee has established itself as a focal point for resource information in the field of dispute resolution. The committee maintains a clearinghouse of information, produces a quarterly newsletter and provides technical assistance upon request. Two important publications are: Dispute Resolution Program Directory, 1983, Larry Ray, Editor and Alternative Methods of Dispute Settlement--A Selected Bibliography, Frank E.A. Sander, December, 1979.

UMass Mediation Project
University of Massachusetts
127 Hasbrouck
Amherst, MA 01003

(413) 545-2462
Janet Rifkin

A source of information, technical assistance and training. Particularly experienced in dealing with disputes that arise in the university setting.



For additional information about resources

Dispute Resolution Program Directory, 1983, Larry Ray, Editor. Compiled by the Special Committee on Alternative Dispute Resolution, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036. This directory gives the reader the essential information about 188 dispute resolution projects across the United States.

Dispute Resolution Directory, Boston Area Courses and Internships, Peter Woodrow and John Horberry, Research Assistants, Complied by The Harvard Negotiation Project and The Harvard Law School Program in Dispute Resolution. 500 Pound Hall, Harvard Law School, Cambridge, MA 02138. This directory lists courses and internships in the Boston area in the fields of conflict resolution, negotiation and mediation, labor relations and collective bargaining and internation peacemaking.

Mediation in the Schools

The skills learned during mediation training and the potential of mediation for effective dispute resolution make it a subject of much interest to educators. Listed below are four projects, past and present, each dedicated to bringing the benefits of mediation to young people.

CloseUp/Political Discovery Mediation Project: This project, funded by the CloseUp Foundation, Washingto, D.C., trained students and teachers from five Greater Boston schools to act as mediators. The participants were to consider the application of mediation to resolving disputes in the school setting. For more information contact:

Philip Baas
Madison Park High School
55 New Dudley Street
Roxbury, Ma 02119
(617) 445-2440

Susan Chapin
Cathedral High School
74 Union Park
Boston, Ma 02116
(617) 542-2325

Ronny Sydney
Brookline High School
115 Greenough Street
Brookline, MA 02146
(617) 734-1111

Rosemary Scott-Sport
J.E. Burke High School
60 Washington Street
Dorchester, MA 02124
(617) 427-0240

Nikki Descoteaux
Dana Hall
Wellesley, MA 02181
(617) 235-3010, Ext. 171

CloseUp/Boston Prep Mediation Project: This project is one of the CloseUp Foundation Partners Programs, funded, in part, by the Office of Juvenile Justice and Delinquency Prevention. Fifteen students were trained in mediation skills. They also were able to participate in the week-long CloseUp program which brings over 300 students and teachers from Massachusetts to Washington, D.C. to learn about the federal government first hand. For more information contact:

Edward Joyce, Program Manager
Boston Prep, Boston Public Schools
60 Joy Street
Boston, Ma 02114
(617) 742-1033

Youth Negotiation Project: The Harvard Negotiation Project is working with the District Court Department and other key agencies and organizations to develop curriculum materials and teacher training opportunities that will bring the benefits of negotiation, mediation and other forms of conflict resolution to young people. The project will begin its development activities at the high school level. For more information contact:

Albie Davis
Coordinator
Harvard Negotiation Project
Harvard Law School
Pound Hall 500
Cambridge, MA 02141
(617) 495-1684

Elementary/Middle School Approaches: There is strong interest in mediation at the elementary and middle school levels. Arlene Gallagher, Elms College, is in the process of developing law-related education activities and materials that will enhance the ability of young people to resolve disputes peacefully by increasing their ability to see other people's points of view. She has written Living Together Under the Law, An Elementary Education Law Guide published by the New York Bar Association and is currently working on concepts for the middle school grades. For more information contact:

Arlene Gallagher
Professor
Elms College
Springfield Street
Chicopee, MA 01013
(413) 598-8351

COURTS and the CLASSROOM

VOLUME 3 NUMBER 3

PUBLISHED BY THE DISTRICT COURT DEPARTMENT OF THE TRIAL COURT
IN COOPERATION WITH THE MASSACHUSETTS ASSOCIATION
FOR LAW-RELATED EDUCATION

JULY, 1982

STUDENTS RECEIVE DISPUTE RESOLUTION TRAINING FROM DORCHESTER DISTRICT COURT MEDIATION UNIT

Boston Area Schools Benefit from Program Funded by Close Up

Students and teachers from five Greater Boston high schools were trained this Spring as mediators by members of the Dorchester District Court Mediation Unit. The project was conducted by Political Discovery (EdCo) and funded by the CloseUp Foundation's Partners Program (which is funded, in part, by a grant from the Office of Juvenile Justice and Delinquency Prevention) Two primary goals shaped the program: to give the 22 participants a first-hand opportunity to experience the nature of the mediation services offered by the Massachusetts District Courts, and to consider the applicability of the mediation process as a means of dispute resolution in the school setting.

Della Rice, Court Services Coordinator, and Kathy Grant, Probation Assistant, both from the Dorchester District Court, as well as Nancy Feeney, a community mediator, conducted the training, which took place at Boston University Law School in eleven, three-hour sessions.

Mediation has several unique features which differentiate it from other forms of dispute resolution. (See box with definitions of mediation, arbitration, adjudication, and negotiation.) The District Court Department Special Committee to Study Alternative Means of Dispute Resolution recommended the expansion of court programs experimenting with mediation techniques.

In mediation, emphasis on determining the facts of a case in order to assign liability is lessened. Discovering the feelings and attitudes that

cont. pg. 2, col. 3

Participating in mediation role play are, from left: Melissa Sparks, Dana Hall; Julie Gershon, Brookline; Leonard Weinstein, Brookline; Tina Choe, Dana Hall.

MALRE SCHEDULES SEVENTH ANNUAL TEACHING ABOUT THE LAW CONFERENCE

On Tuesday, October 26, 1982, the Massachusetts Association for Law-Related Education will hold its Annual TEACHING ABOUT THE LAW Conference at the University of Massachusetts in Amherst. This day-long conference brings together educators at all levels, lawyers, judges, paralegals, probation officers, law enforcement officials, students and others interested in teaching or learning about the law.

Each participant will have a chance to attend three workshops which cover a wide range of topics, including teaching strategies, recent developments in the law, and use of community resources.

Evaluations of past conferences have shown that participants find this conference to be an invaluable means of keeping up-to-date in the field of law-related education and expanding their own network of resources.

If you wish to attend the Conference, please write to John Burke, Administrative Assistant, Supreme Judicial Court, 1300 New Courthouse, Boston, MA 02108.

Alabama Courts, Educators Cooperate To Produce K-12 LRE Curriculum

by
Julie Young, Coordinator
Schools and Community Programs
Alabama Supreme Court

Along with the traditional "reading, writing, and 'rithmatic," students in Alabama schools are now being taught about law and the courts. With the aid of a comprehensive package of supplemental classroom materials, Alabama teachers can now incorporate extensive studies on the law, legal procedures, courts and the judicial system into the existing state-adopted social studies curricula.

Publication of the series, entitled "Law, The Language of Liberty," was the result of a one-year cooperative effort involving the Administrative Office of Courts, the State Department of Education, the Alabama Education Association, and the Alabama Council for School Administration and Supervision. Educators from all sectors of the state, representing all grade levels as well as administration, worked with state court officials to develop recommendations for the materials. The final product includes nine packets of information for grades K-12. Each grade packet contains a wide range of supplemental activities which are suitable for immediate use in the classroom.

The series, which was distributed to every public school in the state, is the hub of a broader effort on the part of Chief Justice C. C. Torbert, Jr., and the Administrative Director of the Courts, Allen L. Tapley, to teach young people about the law and the courts. Speakers' bureaus, educational forums and law-awareness projects are other components of the overall educational program.

"We have found in Alabama that the educational community has been most receptive to the series of materials. We are convinced that, through education, we can create a greater respect among our young people for the law and its purpose," said Chief Justice Torbert.

TO "COURTS AND THE CLASSROOM" READERS:

Julie Van Camp's conclusion of her service to the Commonwealth's District Courts, its educational community, and, most importantly, its students, would ordinarily call for a detailed listing of her magnificent and lasting accomplishments in the area of law related education. To do so would require a special edition of many pages of this Newsletter, which she conceived and nurtured. Thus, the brevity of these words of thanks cannot match the expansiveness of her creativity, her boundless energy, and the depth of her commitment to a program which now has become an important institutionalized aspect of court-community relations. Julie leaves with our warm admiration, appreciation and highest hopes for success in her new efforts. She has left her mark and those who have benefited through association with her wish her and her family all that is best in the years to come.

Albie Davis, the newly appointed Student Law-Related Education Coordinator, brings her own impressive credentials to this endeavor. Her experience and enthusiasm offer great promise that the continuity and quality of our established program will be insured. We welcome her with pleasure.

Samuel E. Zoll

Samuel E. Zoll
Chief Justice
District Court Department
of the Trial Court

Salem Residents Talk with "Stars" of "Preserving Your Rights..."

The Salem District Court, in cooperation with the Salem and Beverly Police Departments, sponsored a public screening of the film, "Preserving Your Rights . . . And Those of Your Neighbor," at the Salem court recently. Attendees included teachers, school administrators, social agency personnel and community resource people.

The film is being used as a keystone to build a comprehensive law-related education program in area schools and to assist social agencies that conduct education programs. Since most of the film was shot in the Salem District Court, using Salem High School students, Salem District Court and Police Department personnel, the viewers were given the opportunity to discuss film issues with some of the actual cast. Officer Tony Piero of the Salem Police Department and Sgt. Ronald Gagne of the Beverly Police Department offered attendees access to their respective film libraries. Susan Foster of the Salem District Court Diversion Program assembled an information table of relevant resources for the screening, and is developing a network of community resources to support area law-related education programs.

led to the dispute and finding mutual agreements which will improve the way that disputing parties relate in the future is the focus.

Mediation is especially appropriate in cases where there is an on-going relationship between the parties, such as family members, neighbors, landlords and tenants, merchants and customers, co-workers and students and teachers.

Training to be a mediator is a tough, intensive, emotional and intellectual experience, as the 22 trainees can attest. A hands-on approach is used, with each person participating in role plays either as disputants, mediators, or active observers. Through these life-like experiences, trainees learn to set the disputants at ease; explain the mediation process clearly; draw out the important issues and feelings in the dispute; deal with the emotions involved; search for areas of commonality; help people express the outcomes they would like; eliminate extreme positions; and design and draft in writing settlements agreeable to both parties.

Interpersonal skills, such as active listening and projecting a sense of neutrality (but not indifference), are learned and perfected. Mediators must also understand that they are not to impose their own value systems upon the disputants.

"Being the mediator taught us the skills we need to mediate; playing the role of the disputant helped us to understand the feelings and tensions involved and to be sensitive to them; and finally (but not least important), being the observer helped us to recognize the mistakes we all make."

Guidance for the project was provided by a Coordinating Committee, chaired by Albie Davis, former Director of Political Discovery. Other Committee members included Nikki Descoteaux, *Dana Hall;* Philip Baas, *Madison Park High School;* Ronny Sydney, *Brookline High School;* Julie Gershon, student, *Brookline High School;* George Torres, student, *Madison Park High School;* David Hiers, student, *Boston University Law School;* Robert Clayman, student, *Boston University Law School;* Rosemary Scott-Sport, *J. E. Burke High School;* Susan Chapin, *Cathedral High School;* Della Rice, *Dorchester District Court.* Other students who participated in the training included: Belinda Dodds, Leo Ortega, Leeja-Ann Stillman, Kevan Budrow (Madison Park); Kitt Zorn, Becky Weisel, John Pouldick, Andrew Boni, Leonard Weinstein, Brian Lewis (Brookline); Frankie Samual, Clark Cesar, Christie Chambers (Cathedral); and Melissa Sparks, Tina Choe and Lynel Tully (Dana Hall).

Other courts that have had experience in mediation programs include Salem, Cambridge, Taunton, New Bedford and Quincy. For more information on mediation, call or write Albie Davis, Court Services Coordinator, Law-Related Education, District Court Department of the Trial Court, 209 Essex Street, Salem, MA 01970, (617) 745-9010.

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2. Mediating Disputes: An American Paradox

1. Abel, Richard, ed., The Politics of Informal Justice, New York: Academic Press, 1982.

   This book offers a series of articles written by scholars from a broad range of academic disciplines who attempt to analyze the current approaches to mediation in a broad social context.

2. Nichols and Alpert, Beyond the Courtroom, Lexington Books, 1980.

   This book reviews the broad range of existing approaches to conflict resolution, including the adversary system, arbitration, mediation and cross-cultural approaches.

3. Sander, Frank and Snyder, Fred, Alternative Methods of Dispute Settlement: A Selected Bibliography, American Bar Association Special Committee on the Resolution of Minor Disputes, 1979.

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For copies or to be added to the Committee's complimentary subscription list, write:

Larry Ray or Susan Poole
Special Committee on Alternative Means
Of Dispute Resolution
American Bar Association
1800 M Street N.W.
Washington, D.C. 20036
(202) 331-2258

MEDIATION UPDATE FORM

1. Name of Project _____

   Affiliation _____

   Address _____

   _____ Zip _____

   Day Phone ( ) _____ Evening Phone ( ) _____

2. Contact Person _____

   Title _____

3. Community Served _____

   Date established _____

   Types of Cases _____

   _____

   Referral Sources _____

   _____

   Who Mediates? _____

   _____

   How are Mediators Trained? _____

   _____

4. What services does the project offer? Please indicate if your project: conducts mediation training, has publications or materials that are available to the public, will offer technical assistance to those wishing to start new projects or improve existing ones or has staff members that will speak about the project.

   _____

   _____

   _____

   _____

Send to: Albie Davis, District Court Department
Holyoke Building, Holyoke Square
Salem, MA 01970